

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Randall Edwin Latimer,)	C/A No. 6:10-721-JFA-WMC
)	
Petitioner,)	
)	
vs.)	ORDER
)	
Warden, Perry Correctional Institution,)	
)	
Respondent.)	
)	

The *pro se* petitioner, Randall Edwin Latimer, brings this action pursuant to 28 U.S.C. § 2254 challenging his 1996 state court conviction of a life sentence for first-degree burglary.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he opines that the petition is successive and that the petitioner has not received permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition. The Magistrate Judge recommends dismissal of the action with prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on April 14, 2010. Petitioner filed timely

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

objections. The objections are conclusory and repetitive of the claims he has set forth in his habeas petition. As such, they are overruled.

The Magistrate Judge notes that this is the third petition by Mr. Latimer and that the grounds raised by petitioner here could have been raised in his initial § 2254 which was dismissed with prejudice.

Because the petitioner has not received permission from the Fourth Circuit to file a successive petition, this court is without authority to hear the § 2254 petition. *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003) (“In the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims.”).

After a careful review of the record, the applicable law, the Report and Recommendation, and the petitioner’s objections thereto, the court finds the Magistrate Judge’s recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed with prejudice.

On December 1, 2009, the Rules governing Section 2254 and 2255 cases in the United States District Courts were amended to require that the district court issue or deny a certificate of appealability when a final ruling on a habeas petition is issued. See Rule 11(a) of the Rules governing 28 U.S.C. § 2254 and 2255. The court has reviewed its order and pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 cases, declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322,

336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

July 8, 2010
Columbia, South Carolina